
A BILL FOR AN ACT

RELATING TO THE FUNDING OF GOVERNMENT PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that achieving the
2 important goal of energy and food security established by Act
3 73, Session Laws of Hawaii 2010, requires a long-term commitment
4 and investment of financial resources. To that end, the
5 legislature increased the per-barrel tax on petroleum products
6 under the environmental response, energy, and food security tax,
7 which was formerly known as the environmental response tax.

8 The environmental response tax had been five-cents per
9 barrel since its inception in 1993 until it was increased to
10 \$1.05, effective July 1, 2010. The one dollar increase has
11 helped sustain Hawaii's clean energy progress and has brought
12 attention to the energy nexus between food security, economic
13 development, and climate change. While, in theory, the tax
14 serves to discourage reliance on fossil fuels, its major impact
15 has been to provide funding for energy and food security
16 initiatives.

17 The purpose of this Act is to:



- 1 (1) Apply a fair and equitable taxation policy to all
- 2 fossil fuels to advance Hawaii's clean energy, food
- 3 security, and climate change policies; and
- 4 (2) Develop a fee structure to supplement the current tax
- 5 structure, under which revenues are deposited into the
- 6 environmental response revolving fund, to support the
- 7 operations of the five programs in the department of
- 8 health's environmental health administration:
- 9 (A) Hazardous evaluation and emergency response;
- 10 (B) Environmental management division;
- 11 (C) Clean water branch;
- 12 (D) Safe drinking water branch; and
- 13 (E) Solid and hazardous waste branch.

14 SECTION 2. Chapter 340A, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 "§340A- Fees. The director shall establish and collect
18 a fee of \$ for permits issued or services rendered under
19 this chapter."

20 SECTION 3. Section 243-3.5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§243-3.5 Environmental response, energy, and food
2 security tax; uses. (a) In addition to any other taxes
3 provided by law, subject to the exemptions set forth in section
4 243-7, there is hereby imposed a state environmental response,
5 energy, and food security tax on each barrel or fractional part
6 of a barrel of petroleum product sold by a distributor to any
7 retail dealer or end user of petroleum product, other than a
8 refiner. The tax shall be \$1.05 on each barrel or fractional
9 part of a barrel of petroleum product that is not aviation fuel;
10 provided that of the tax collected pursuant to this subsection:

11 (1) 5 cents of the tax on each barrel shall be deposited
12 into the environmental response revolving fund
13 established under section 128D-2;

14 (2) 15 cents of the tax on each barrel shall be deposited
15 into the energy security special fund established
16 under section 201-12.8;

17 (3) 10 cents of the tax on each barrel shall be deposited
18 into the energy systems development special fund
19 established under section [†]304A-2169.1[†]; and



(4) 15 cents of the tax on each barrel shall be deposited into the agricultural development and food security special fund established under section 141-10.

The tax imposed by this subsection shall be paid by the distributor of the petroleum product.

(b) In addition to subsection (a), the tax shall also be imposed on each one million British thermal units of fossil fuel, other than petroleum product, sold by a distributor to any retail dealer or end user, other than a refiner, of fossil fuel.

The tax shall be \$0.19 on each one million British thermal units of fossil fuel; provided that of the tax collected pursuant to this subsection:

(1) per cent of the tax on each one million British thermal units shall be deposited into the energy security special fund established under section 201-12.8;

(2) per cent of the tax on each one million British thermal units shall be deposited into the energy systems development special fund established under section 304A-2169.1; and



1 (3) per cent of the tax on each one million British
2 thermal units shall be deposited into the agricultural
3 development and food security special fund established
4 under section 141-10.

5 The tax imposed by this subsection shall be paid by the
6 distributor of the fossil fuel.

7 ~~[(b)]~~ (c) Each distributor subject to the tax imposed by
8 subsection (a) ~~[-]~~ or (b), on or before the last day of each
9 calendar month, shall file with the director, on forms
10 prescribed, prepared, and furnished by the director, a return
11 statement of the tax under this section for which the
12 distributor is liable for the preceding month. The form and
13 payment of the tax shall be transmitted to the department of
14 taxation in the appropriate district.

15 ~~[(e)]~~ (d) Notwithstanding section 248-8 to the contrary,
16 the environmental response, energy, and food security tax
17 collected under this section shall be paid over to the director
18 of finance for deposit as provided in subsection (a) ~~[-]~~ or (b),
19 as the case may be.

20 ~~[(d)]~~ (e) Every distributor shall keep in the State and
21 preserve for five years a record in ~~[such]~~ a form as the



1 department of taxation shall prescribe showing the total number
2 of barrels, and the fractional part of barrels, of petroleum
3 product or the total number of one million British thermal units
4 of fossil fuel, as the case may be, sold by the distributor
5 during any calendar month. The record shall show ~~[such]~~ any
6 other data and figures relevant to the enforcement and
7 administration of this chapter as the department may require.

8 (f) For the purposes of this section:

9 "Barrel" may be converted to million British thermal units,
10 using the United States Department of Energy, Energy Information
11 Administration annual energy review or annual energy outlook.

12 "Fossil fuel" means a hydrocarbon deposit, such as coal,
13 natural gas, or liquefied natural gas, derived from the
14 accumulated remains of ancient plants or animals and used for
15 fuel; provided that the term specifically does not include
16 petroleum product."

17 SECTION 4. Section 340E-9, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[+]§340E-9[+] Administration. The director may:

20 (1) Perform any and all acts necessary to carry out the
21 purposes and requirements of this chapter;



- 1 (2) Administer and enforce the provisions of this chapter
2 and all rules, regulations, and orders promulgated;
- 3 (3) Enter into agreements, contracts, or cooperative
4 arrangements with any person;
- 5 (4) Receive financial and technical assistance from the
6 federal government and other public or private
7 agencies;
- 8 (5) Participate in related programs of any public or
9 private agencies or organizations;
- 10 (6) Establish adequate fiscal controls and accounting
11 procedures to assure proper disbursement of an
12 accounting for funds appropriated or received for the
13 purpose of carrying out this chapter;
- 14 (7) Delegate those responsibilities and duties as
15 appropriate for the purpose of administering the
16 requirements of this chapter;
- 17 (8) Establish and collect fees for conducting plan
18 reviews, inspections and laboratory analyses as
19 necessary; [and]
- 20 (9) Establish and collect a fee of \$ for any other
21 services rendered and for the issuance of any permits;



1 [~~(9)~~] (10) Prescribe such regulations as necessary to carry
2 out the director's function under this chapter."

3 SECTION 5. Section 342B-29, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§342B-29 Fees.** (a) The director shall establish fees
6 for permits issued pursuant to this chapter to be paid by the
7 applicant prior to the issuance of the permit and thereafter on
8 a schedule established by the department.

9 (b) Fees for covered sources shall adequately cover the
10 direct and indirect costs required to develop, support, and
11 administer the permit program, including the reasonable costs
12 of:

13 (1) Reviewing and acting upon any application for or
14 renewal of a permit;

15 (2) Implementing and enforcing the terms and conditions of
16 any permit, including legal support;

17 (3) Monitoring emissions and ambient air quality,
18 including resources to audit and inspect source-
19 operated monitoring programs at least once a year;

20 (4) Preparing generally applicable rules or guidance;



(5) Performing or reviewing modeling, analyses, and demonstrations;

(6) Preparing inventories and tracking emissions;

(7) Providing support to the small business assistance program; and

(8) Administering the fund.

(c) Fees for covered sources shall be based on the number of tons of regulated air pollutant, excluding carbon monoxide, allowed or emitted by the permitted source and shall not be less than \$25 per ton per year.

(d) Unless changed by rules, fees for covered sources shall be changed in December of each year only by the percentage, if any, by which the consumer price index for that calendar year exceeds the consumer price index for the prior calendar year. The consumer price index for any calendar year is the average of the consumer price index for all urban consumers published by the United States Department of Labor, as of the close of the twelve-month period ending on August 31 of each calendar year.

(e) Nothing in the cost-per-ton fee provisions of subsections (c) and (d) shall restrict the director from



1 assessing more or less than the amount determined under
2 subsections (c) and (d) from any one covered source or any class
3 or category of covered sources, as designated by the director;
4 provided the department collects a total amount of fees
5 sufficient to cover the costs of the permit program.

6 (f) The director may establish and collect a fee of
7 \$ for any other services rendered under this chapter."

8 SECTION 6. Section 342D-13, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[+]§342D-13[+] Fees. The director may establish
11 [reasonable] :

12 (1) Reasonable fees for the issuance of permits and
13 variances to cover the cost of issuance thereof and
14 for the implementation and enforcement of the terms
15 and conditions of permits and variances (not including
16 court costs or other costs associated with any formal
17 enforcement action) [-] ; and

18 (2) A fee of \$ for any other services rendered under
19 this chapter.

20 The fees shall be deposited to the credit of the general fund."



SECTION 7. Section 342E-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other power or duty prescribed by law, the director shall:

(1) Reduce, control, and mitigate nonpoint source pollution in the State;

(2) Adopt rules under chapter 91 necessary for the purposes of this chapter, which may include water quality standards for specific areas, types of nonpoint source pollution discharges, or management measures in the control of water pollution, allowing for varying local conditions;

(3) Develop plans, recommendations, and policies, and provide other support to further the State's capacity to carry out the requirements of any federal law, rule, or regulation pertinent to the management or mitigation of nonpoint source pollution;

(4) Work cooperatively with other state, county, and federal agencies, to facilitate the monitoring of and update the list of waters in the State that cannot reasonably be expected to attain or maintain state



1 water quality standards and goals established under
2 the federal Water Quality Act of 1987 (P.L. 100-4)
3 without additional action to control nonpoint source
4 pollution;

5 (5) Identify those categories of nonpoint sources that add
6 significant pollution to the state waters identified
7 under paragraph (4);

8 (6) Facilitate implementation of the best management
9 practices, programs, and measures to control each
10 category of nonpoint source pollution identified under
11 paragraph (5), and encourage nonpoint source pollution
12 mitigation practices including, but not limited to,
13 the use of non-hazardous substances in the household
14 and agroforestry management;

15 (7) Identify public and private sources of expertise,
16 technical assistance, financial assistance,
17 educational assistance, training, and technology
18 transfer;

19 (8) Convene statewide and regional public forums involving
20 the general public, the regulatory community, and
21 businesses and industries that may contribute to



categories of nonpoint source pollution for the purpose of establishing plans, and developing management strategies and other mitigation measures to control and manage nonpoint source pollution;

(9) Provide funding for projects to demonstrate the best available technology and best management practices for preventing and mitigating nonpoint source pollution;

(10) Provide funding for public initiative projects to encourage education and prevention measures relating to nonpoint source pollution;

(11) Propose legislation, alternate funding mechanisms, and new programs to improve the State's capacity to mitigate nonpoint source pollution; ~~and~~

(12) Review environmental assessments and environmental impact statements as defined under section 343-2 for the purposes of commenting on the effects that a proposed action would have on the level of nonpoint source pollution generated in an area[-]; and

(13) Establish and collect a fee of \$ for services rendered and any permits issued under this chapter."



SECTION 8. Section 342J-13, Hawaii Revised Statutes, is amended to read as follows:

"§342J-13 Fees. The director may establish [~~reasonable~~]:

(1) Reasonable fees for the issuance of permits to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits (not including court costs or other costs associated with any formal enforcement action) [~~-~~]; and

(2) A fee of \$ _____ any other services rendered under this chapter.

The fees shall be deposited to the credit of the general fund."

SECTION 9. Section 342L-14, Hawaii Revised Statutes, is amended to read as follows:

"§342L-14 Fees. Notwithstanding section 342L-36.5 to the contrary, the director may establish [~~reasonable~~]:

(1) Reasonable fees for the:

(A) The registration of underground storage tanks or tank systems [~~-for the~~];



1 (B) The issuance, renewal, and modification of
2 permits and variances to cover the cost of
3 issuance thereof [~~and for the~~];

4 (C) The implementation and enforcement of the terms
5 and conditions of permits and variances including
6 inspections and necessary site visits (not
7 including court costs or other costs associated
8 with any formal enforcement action) [~~, and for~~
9 ~~the~~]; and

10 (D) The review, evaluation, and approval of plans
11 regarding release response activities[~~-~~]; and

12 (2) A fee of \$ for any other services rendered under
13 this chapter.

14 The fees shall be deposited to the credit of the general fund."

15 SECTION 10. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 11. This Act shall take effect on July 1, 2015;
18 provided that the amendments to section 243-3.5, Hawaii Revised
19 Statutes, that are made in section 3 of this Act shall not be
20 repealed when section 243-3.5, Hawaii Revised Statutes, is

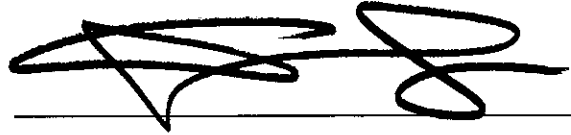


H.B. NO.

1 reenacted on June 30, 2030, pursuant to section 3(2) of Act 107,
2 Session Laws of 2014.

3

INTRODUCED BY:

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JAN 29 2015



H.B. NO. 1471

Report Title:

Environmental Response, Energy, and Food Security Tax; DOH Fees

Description:

Applies the state environmental response tax to fossil fuel other than petroleum product and bases the tax on one million British thermal units (MBTU). Defines "fossil fuel" to exclude petroleum product. Authorizes DOH to establish and collect fees for permits issued and services rendered for its environmental health programs in the areas of hazardous evaluation and emergency response, environmental management division, clean water branch, safe drinking water branch, and solid and hazardous waste branch.

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